STATE OF CALIFORNIA GRAY DAVIS, *Governor*

PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

November 15, 2002 Agenda ID #1383

TO: PARTIES OF RECORD IN CASE 00-02-019

This is the draft decision of Administrative Law Judge (ALJ) McKenzie. It will not appear on the Commission's agenda for at least 30 days after the date it is mailed. The Commission may act then, or it may postpone action until later.

When the Commission acts on the draft decision, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Parties to the proceeding may file comments on the draft decision as provided in Article 19 of the Commission's "Rules of Practice and Procedure." These rules are accessible on the Commission's website at http://www.cpuc.ca.gov. Pursuant to Rule 77.3 opening comments shall not exceed 15 pages. Finally, comments must be served separately on the ALJ and the assigned Commissioner, and for that purpose I suggest hand delivery, overnight mail, or other expeditious method of service.

ANGELA K. MINKIN for
Carol A. Brown, Interim Chief
Administrative Law Judge

CAB:tcg

Attachment

ALJ/MCK/tcg **DRAFT** **Agenda ID #1383**
Adjudicatory

Decision **DRAFT DECISION OF ALJ MCKENZIE** (Mailed 11/15/2002)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Dennis Hanlon and Juanita Hanlon, Complainants, vs. Cox California Telcom, L.L.C. dba Cox Communications (U-5846-C), Defendants.	Case 00-02-019 (Filed February 15, 2000)

DECISION DISMISSING COMPLAINT DUE TO MOOTNESS

This decision dismisses this case on the ground of mootness. As explained below, the principal grievance set forth in the complaint has been addressed by defendant Cox California Telcom, L.L.C. (Cox), and the complainants' other concerns are being addressed in other Commission proceedings. Thus, developments since the filing of the complaint have rendered this case moot.

Backround

The complaint herein was filed in February 2000. It arose out of the installation by defendant Cox of certain telephone equipment necessary to enable Robert and Sharon Nava, the neighbors of complainants, to take telephone service from Cox. The equipment installation took place on April 10 and 12, 1999. At the time of the installation, complainants and the Navas (who are not

parties to this case) were neighbors who each occupied one unit in a two-unit condominium in San Clemente, California.

The complaint alleged that on the dates in question, Cox personnel had entered complainants' premises without notice for the purpose of installing a network interface unit (NIU), a device that allowed the Navas to take local exchange telephone service from Cox. The complaint alleged in very general terms that such entry without notice was improper and unlawful.

The complaint also alleged that when the Hanlons complained about Cox's installation of the NIU on the door of a utility closet they shared with the Navas, and the Navas agreed that the NIU should be moved to their property, Cox declined to do so unless the Navas paid "special construction charges." Because Cox conditioned its willingness to move the NIU upon the payment of these charges, the complaint alleged that Cox had engaged in false and misleading advertising when it offered existing cable subscribers like the Navas "free" activation of local telephone service. The complaint also alleged that advertisements relating to high-speed Internet access service offered by a Cox affiliate were false and misleading.

On April 3, 2000, Cox filed an answer denying the material allegations of the complaint. Cox also filed a motion to dismiss, which sought dismissal of the complaint on several grounds. First, Cox argued that the complaint failed to identify any law or Commission rule or order that Cox had violated, as required by § 1702 of the Pub. Util. Code.

Second, Cox argued that under its interconnection agreement with Pacific Bell (and agreements with other Cox affiliates), Cox had a right to use existing utility easements for the purpose of providing local exchange service, and that this was all it had done in the case of the Navas. Since the Hanlons' complaints about the entry of Cox personnel onto their property arose out of a permissible

use of easements, the conduct complained of was not actionable, according to Cox.

Third, to the extent the complaint could be read as challenging the validity of one or more Cox's tariffs, Cox argued that the complaint failed to state a claim because the signature requirements of Pub. Util. Code § 1702 had not been complied with.[1] Finally, Cox argued that since the complainants were not Cox customers, they lacked standing to challenge the allegedly unfair effects of Cox's tariffs upon persons who were Cox customers.

A prehearing conference (PHC) was held by telephone on July 12, 2000. After some discussion of complainants' allegations, counsel for Cox agreed to the suggestion of the assigned Administrative Law Judge (ALJ) that Cox should send its personnel to complainants' home at a convenient time to determine whether the NIU could be moved to a different location satisfactory to the complainants. It was also agreed that after this visit was made, a second telephonic PHC would be held to determine whether any other issues needed to be decided.

The second telephonic PHC was held on September 26, 2000. During this PHC, complainants acknowledged that Cox personnel had visited their home as agreed and had relocated the NIU to their satisfaction. However, the Hanlons declined to agree to an immediate dismissal of their complaint, saying that they had made other allegations about the conduct of Cox personnel, and that they wanted to consider these further before agreeing to any dismissal.

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[1] Section 1702 requires that in order to challenge a utility tariff in a complaint, the complaint must be "signed by the mayor or president or chairman of the board of trustees or a majority of the council, commission, or other legislative body of the city or city and county within which the violation occurred, or by not less than 25 actual or prospective consumers or purchasers of such gas, electricity, water, or telephone service."

On October 3, 2000, complainants sent a letter by facsimile to the assigned ALJ. The letter stated that while the Hanlons would not be pursuing their claims of false and misleading advertising, they did wish to pursue their claims (1) that the Commission should investigate Cox's placement of telecommunications equipment in residences in Orange and San Diego Counties, (2) that Cox should be required to give advance notice to non-customers who would be directly affected by a Cox installation, (3) that Cox's employees and contractors should always be required to identify themselves when on the job, and (4) that Cox should be required to respond to all complaints, whether from customers or non-customers, within 30 days.

On October 26, 2000, complainants submitted what they characterized as an answer to Cox's motion to dismiss. In this pleading, the Hanlons reiterated their complaints about the failure of Cox personnel to introduce themselves when doing installation work at complainants' condominium, and set forth the details of another such incident that allegedly occurred on February 24, 2000. In addition, complainants stated that they wished to examine Cox's training manuals for employees.

Since the filing of October 26, 2000, the Commission has had three communications from complainants. On November 16, 2000, they faxed a letter to the Assigned ALJ noting that Cox had not responded to the claims in the October 26 pleading. On March 5, 2001, complainants sent a letter to the Commission concerning their recent change of address. On January 16, 2002, they sent another letter to the Commission concerning a further change of address.

Discussion

As noted above, the principal grievance that gave rise to the complaint in this case was that Cox personnel had installed the NIU intended to serve the

Navas in complainants' utility closet. Although Cox insisted that the applicable easements entitled it to make this installation, Cox personnel moved the NIU to a location satisfactory to the complainants after the first PHC in July 2000. Thus, the principal issue raised by the complaint is now moot.

Another of the complainants' grievances was that Cox personnel failed to identify themselves when they came to the Hanlons' condominium to do the installation work. The issue of how employees of telecommunications companies must identify themselves has recently been addressed in Rulemaking (R.) 00-02-004, the Commission's proceeding to establish consumer rights and consumer protection rules applicable to all telecommunications utilities. In that proceeding, Commissioner Wood has proposed (in a June 6, 2002 draft decision) that the Commission adopt a new general order, Part II of which would include a rule concerning employee identification. Rule 14, the proposed new employee identification rule, provides as follows:

> "(a) Every carrier shall prepare and issue to every employee who, in the course of his or her employment, has occasion to enter the premises of subscribers of the carrier or applicants for service, an identification card in a distinctive format having a photograph of the employee. The carrier shall require every employee to present the card upon requesting entry into any building or structure on the premises of an applicant or subscriber.
>
> "(b) Every carrier shall require its employees to identify themselves at the request of any applicant or subscriber during a telephone or in-person conversation, using a real name or other identifier unique for the carrier and the applicant or subscriber to refer matters back to the same employee in the future when necessary."

Commissioner Wood's commentary on this proposed rule notes that it is based on Pub. Util. Code § 708, and that because it affects public safety, it was

perhaps the least controversial rule of any proposed in R.00-02-004. The commentary also notes that the term "employee" is defined to include "employees, contract employees, contractor employees, agents, and carrier representatives of any and all types." (June 6 draft decision, pp. 79-80.)

Given the lack of controversy surrounding the proposed employee identification rule, it is likely that the Commission will adopt it in the near future. The fact that it applies to the contractors of a telecommunications company as well as to employees should go a long way toward addressing complainants' general concern about the failure of Cox employees to identify themselves properly.

On September 27, 2002, the assigned ALJ issued a ruling setting forth the procedural history described above and suggesting that in view of the fact complainants' principal grievances had been addressed by Cox's relocation of the NIU and by the proposed new Rule 14, this proceeding should be dismissed as moot. The September 27 ruling asked any party with a contrary view to file comments by October 18, 2002 setting forth the reasons why this case should be kept open. No comments were filed in response to this invitation.

In view of the history described above, it is clear that complainants' principal concerns have been addressed, and that this case should accordingly be dismissed as moot.

Comments on Draft Decision

The draft decision of the administrative law judge in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(g)(1) and Rule 77.7 of the Rules of Practice and Procedure. Comments were filed on _____.

Assignment of Proceeding

Geoffrey Brown is the Assigned Commissioner and A. Kirk McKenzie is the assigned ALJ in this proceeding.

Findings of Fact

1. The principal allegations in the complaint were that (a) Cox personnel had entered complainants' premises without proper notice for the purpose of installing the NIU, and (b) in view of Cox's insistence that it could not move the NIU without the payment of special construction charges, Cox advertisements offering "free" activation of local telephone service to existing cable subscribers were false and misleading.

2. During a telephonic PHC on July 12, 2000, Cox's counsel agreed to send personnel to complainants' residence for the purpose of determining whether the NIU could be moved without charge to a location satisfactory to complainants.

3. During a second telephonic PHC on September 26, 2000, complainants acknowledged that Cox personnel had visited their home as agreed and had relocated the NIU to their satisfaction.

4. On October 3, 2000, complainants sent a letter to the assigned ALJ stating that although they did not intend to pursue their allegations of false and misleading advertising by Cox, they did wish to pursue their claims, *inter alia*, that (a) Cox personnel should always be required to identify themselves when on the job, and (b) Cox should be required to give advance notice to non-customers who would be directly affected by a Cox installation.

5. On October 26, 2000, complainants filed what they characterized as an answer to Cox's April 3, 2000 motion to dismiss. This answer reiterated complainants' claims that Cox personnel had failed to introduce themselves when doing installation work at complainants' condominium.

6. Since October 26, 2000, complainants' only communications with the Commission have been notices of change of address and a letter asserting that Cox had failed to respond to complainants' October 26, 2000 pleading.

7. On June 6, 2002, Commissioner Wood issued a draft decision in R.00-02-004 proposing, among other things, that the Commission adopt a rule that would require every telecommunications carrier to issue to all its employees (as well as to contractors, agents and "carrier representatives of any and all types") an identification card that would have to be shown "upon requesting entry into any building or structure on the premises of an applicant or subscriber."

8. Despite the invitation contained in the ALJ ruling of September 27, 2002, neither complainants nor defendant have filed any comments objecting to the dismissal of this case as moot.

Conclusions of Law

1. Cox's relocation of the NIU to a location satisfactory to complainants has rendered moot one of the two principal issues raised by the complaint.

2. The likelihood that the Commission will adopt in the near future the proposed rule described in Finding of Fact 7 has rendered moot the other principal issue raised by the complaint.

3. The complaint herein should be dismissed as moot.

O R D E R

IT IS ORDERED that:

1. The complaint herein is dismissed.
2. This proceeding is closed.

This order is effective today.

Dated _____, at San Francisco, California.